IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Gulab Chand & Ors. v. State of Rajasthan & Ors.

(1) S.B.CIVIL WRIT PETITION NO.161/1995

Gulab Chand & Ors. v. State of Rajasthan & Ors.

(2) S.B.CIVIL WRIT PETITION NO.385/1995

Petitions under Articles 226 and 227 of the Constitution of India.

Date of Order : 21st April, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

By judgment dated 18.10.1994 the Board of Revenue for Rajasthan, Ajmer decided two applications preferred under Section 221 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as “the Act of 1955”) setting aside the judgment and decree dated 12.7.1968 passed by the Sub Divisional Officer, Bhinmal. These two writ petitions are giving challenge to the judgment aforesaid, hence both are disposed of by this judgment.

The facts in brief are that one Smt. Sunder Devi and Bhojraj Mutwanna filed a suit before the court of Assistant Collector, Bhinmal seeking a declaration for their tenancy with regard to land in dispute. The suit aforesaid was decreed by the trial court by its judgment dated 12.7.1968. Smt. Sunder Devi and Bhojraj were declared as khatedar tenants of khasra No.3608, 3613, 3615 and 3616 of village Bhinmal and a direction was also given for making necessary corrections in revenue record.

The suit was decreed on acceptance by the defendants that they were “Halis” and were erroneously entered as khatedars at the time of settlement. The trial court on basis of admission of the defendants and on basis of the fact that prior to settlement the plaintiffs were recorded as tenants in the revenue record, decreed the suit. Plaintiffs Smt. Sunder Devi and Bhojraj by a registered sale deed dated 16.1.1969 transferred the land in dispute to Yasin Khan and Ayub Khan. Yasin Khan and Ayub Khan then transferred the aforesaid land to one Shri Lachharam and his sons under a sale deed dated 26.4.1972. Shri Lachharam on 10.7.1972 further transferred the land to Smt. Saraswati Devi, mother of present petitioners. The possession of the land was handed over by Shri Lachharam to Smt. Saraswati Devi and the land in dispute was mutated in her name by an order of

mutation dated 13.12.1972. Smt. Saraswati Devi remained in cultivatory possession of the land in dispute till her death and subsequent thereto the petitioners occupied possession of the land and are cultivating the land. The present petitioners too were entered as khatedars in the revenue record by an order dated 29.1.1979. On 31.10.1988 the respondents No.4 to 7 filed two applications under Section 221 of the Act of 1955 before the Board of Revenue for setting aside the judgment and decree dated 12.7.1968 whereby Smt. Sunder Devi and Bhojraj were declared tenants of the land in dispute and in pursuant thereto necessary corrections were made in revenue records.

The respondents No.4 to 7 challenged validity and propriety of the judgment and decree dated 12.7.1968 on 31.10.1988 being in violation of Section 42 of the Act of 1955. The petitioners while contesting the application under Section 221 of the Act of 1955 raised objection with regard to maintainability of the application being filed at belated stage. The petitioners also contended that in the revenue records prior to samvat 2016 husband of plaintiff Smt. Sunder Devi was shown as tenant and, therefore, correction was rightly ordered to be made by the trial court and, therefore, there was no violation of provisions of Section 42 of the Act of 1955. The Board of Revenue by judgment impugned dated 18.10.1994 accepted the application preferred by the

respondents No.4 to 7 and set aside the judgment and decree dated 12.7.1968. Being aggrieved by the same instant petitions for writ are filed by the petitioners under Article 226 and 227 of the Constitution of India.

While giving challenge to the judgment impugned the contentions of counsel for the petitioners are that:

(1)the respondents No.4 to 7 preferred application under Section 221 of the Act of 1955 after a lapse of about 20 years from the date of judgment and decree declaring Smt. Sunder Devi and Bhojraj as tenants of the land in question. Such delay is unreasonable as it effects the settled rights of the petitioners, therefore, the Board erroneously entertained then applications and set aside the judgment and decree.

(2)the Board of Revenue failed to appreciate that prior to samvat 2016 the land in dispute was mutated in favour of the ancestors of plaintiffs Smt. Sunder Devi and Bhojraj and, therefore, on basis of admission by “Halis” of the land in dispute the plaintiffs were declared as khatedars of the land. The Board reached at erroneous finding that the judgment and decree was in violation of the provisions of Section 42 of the Act of 1955.

A reply to the writ petition has been filed on behalf of the respondents No.4 to 7, however, nobody appeared on their behalf at the time of hearing. It is averred in reply that Smt. Sunder Devi and Bhojraj were never in cultivatory possession of the land in dispute and, therefore, their declaration as khatedars by the Assistant Collector was in violation of the provisions of Section 42 of the Act of 1955. It is also stated that Shri Yasin Khan and Ayub Khan as well as Shri Lachharam were having no authority to transfer the land being not having any valid title over the land in dispute.

Counsel for the State while defending the judgment impugned asserted that Board of Revenue on basis of the fact that in jamabandi pertaining to samvat year 2016-2019 held that the land was belonging to Scheduled Caste and reached at the conclusion for breach of the provisions of Section 42 of the Act of 1955, therefore, the judgment and decree dated 12.7.1968 were rightly set aside.

Heard counsel for the parties.

The land in dispute was declared under the tenancy of Smt. Sunder Devi and Bhojraj by judgment and decree dated 12.7.1968. Smt. Sunder Devi and Bhojraj then transferred their rights with regard to

land in dispute to Yasin Khan and Ayub Khan and they further transferred their rights in favour of Shri Lachharam. The petitioners acquired tenancy right pertaining to the land in dispute on getting land transferred in their favour by Shri Lachharam. The respondents No.4 to 7 at first instance challenged validity and propriety of the judgment and decree dated 12.7.1968 by way of filing an application under Section 221 of the Act of 1955 in the month of October, 1988 i.e. after a lapse of more than 20 years from the date of judgment and decree passed by the trial court. The Board of Revenue while accepting the application under Section 221 of the Act of 1955 nowhere held that the judgment and decree was obtained by fraud or by collusion of public officer with private party. The delay in filing application under Section 221 of the Act of 1955 is condoned by Board of Revenue on the count that the transaction made in 1968 was void ab-initio being in violation of Section 42 of the Act of 1955.

The question which is required to be examined is as to whether Board of Revenue after a lapse of 20 years rightly exercised powers under Section 221 of the Act of 1955 in the instant matters. In the case of Situ Sahu & Ors v. State of Jharkhand & Ors., reported in 2005(1) RRT 161, Hon'ble Supreme Court while dealing a similar controversy, held as under:-

> "11.We are, therefore, of the view that the use of the words "at any time" in Section 71-A is evidence of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement to socioeconomic poliy of the Act, viz., to prevent inroads upon the rights of the ignorant, illiterate and backward citizens. Thus, where the Deputy Commissioner chooses to exercise his power under Section 71-A, it would be futile to contend that the period of limitation under Limitation Act has expired. The period of limitation under the Limitation Act has expired. The period of limitation under the Limitation Act is intended to bar suits brought in Civil Courts where the party himself chooses to exercise his right of seeking restoration of immovable property. But, where, for socio-economic reasons, the party may not even be aware of his own rights, the Legislature has stepped in by making an officer of the State responsible for doing social justice by clothing him with sufficient power. However, even such power cannot be exercised after an unreasonably long time during which third party interests might have come into effect. Thus, the test is not whether the period of limitation prescribed in the Act of 1963 had expired, but whether the power under Section 71-A was sought to be exercised after unreasonable delay."

Division Bench of this Court also considered the same issue in the case of State of Rajasthan v. Teja & Ors., reported in 2005(1) DNJ (Raj.) 162, and held as under:-

“9.In Anandi Lal's case (supra), the Division Bench has taken note of the fact that once a tenant/khatedar acquires tenancy/khatedari rights and continues to be in possession of the land, his rights cannot be called in question after unreasonable delay. Such tenants/khatedars are required to be treated at par, for all purposes, with all other tenants/khatedars, who acquired the tenants/khatedari rights over the land. It was further observed that to permit the exercise of revisional powers u/s.82 of the Act of 1956 and/or u/s.232 of the Act of 1955 after unreasonable delay would amount to putting imprimatur of the Courts on the unreasonable and arbitrary exercise of power. The Court took the practical view of the matter observing that within a period of one year, the tenant/khatedar of the land would have spent money for the improvement of the land, he would have arranged his affairs of life on the basis that he is in occupation of the land, he would have entered into several transactions on that basis and made many commitments. In para 25, it is observed that such a power can be exercised even after one year in exceptional cases. Thus, such power can be exercised even after one year not simply in a case of illegality in transaction or fraud simplicitor but where the illegality or fraud is alleged and further it is shown that on account of collusion between the public officers and the private party, the public interest has suffered. Further, this aspect is required to be explained by the revisional authority invoking such power.

> Thus, such powers cannot be invoked for ipse dixit reasons.
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> 10.In the instant case, while it is true that the subject transfer is in violation of Sec.42(b) of the Act of 1955 but that, in itself, is not sufficient. As the respondent has acquired tenancy/khatedari rights and continued in possession of the land for number of years, his rights cannot be called in question after unreasonable delay in absence of a positive case of fraud on account of collusion between the public officer and the private party. The Collector before invoking the revisional power, has not recorded any reasons to the effect that illegality in transfer as a consequence of fraud between the public officer and the private party has suffered public loss. In our view, the Board of Revenue has committed error in accepting the reference made by the Collector without satisfying the pre-requisites. Learned Single Judge has rightly set aside the order of the Board of Revenue following the decision of the Division Bench of this Court in Anandi Lal's case (supra)."

There is no doubt that no limitation is prescribed for exercising powers under Section 221 of the Act of 1955, however, in view of the judgments referred above such a power is always required to be exercised without any unreasonable delay and with all diligence. In the instant matters the judgment and decree was passed by the trial court on 12.7.1968 and propriety of the same was challenged by the

respondents No.4 to 7 after a lapse of more than 20 years. No sufficient reason is given for such a delay. Rights also accrued to the third party during this period. In view of it, I am of the considered opinion that the Board of Revenue erred while exercising powers under Section 221 of the Act of 1955 in the instant matters though there was an allegation of violation of provisions of Section 42 of the Act of 1955.

The Board of Revenue while setting aside the judgment and decree dated 12.7.1968 has also not taken into consideration the finding given by the trial court that Smt. Sunder Devi and Bhojraj were shown as tenants in “nakal girdawari” and “bigori” receipts pertaining to samvat year 2012-2016, whereas the defendants were shown as tenants in the revenue records after 2016. The Board of Revenue while accepting the application under Section 221 of the Act of 1955 has not at all touched this aspect of the matter. The Board of Revenue merely on basis of entries in jamabandi pertaining to samvat 2016-2019 held that Ruga, Prahalada, Harjeeta and Dharma were khatedars of the land and the declaration of Smt. Sunder Devi and Bhojraj as khatedars of the land in dispute was in violation of provisions of Section 42 of the Act of 1955 ignoring the “nakal girdawari” and “bigori” receipts. The Board of Revenue should have considered those documents and a specific finding

should have been recorded while altering the finding given by the trial court.

In view of whatever discussed above, these petitions for writ succeed and, therefore, are allowed. The judgment impugned dated 18.10.1994 passed by Board of Revenue for Rajasthan, Ajmer in Application No.20/88/TA/Jalore, Hanjaram & Ors. v. Ganpatlal & Ors., and Application No.41/88/LR/Jalore, Hanjaram & Ors. v. Ganpatlal & Ors., is quashed and set aside. The judgment and decree dated 12.7.1968 passed by the Sub Divisional Officer, Bhinmal in Revenue Suit No.61/66 (R-12/67), Smt. Sunder Devi & Ors. v. Taria & Ors., is restored.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.